

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 16, 2001 at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 322, 2/9/01
SB 375, 2/5/01
SB 83, 2/9/01
SB 463, 2/13/01
Executive Action: None

HEARING ON SB 322

Sponsor: SENATOR DEBBIE SHEA, SD 18, Butte

Proponents: Bill Snoddy, Self

Arlene Parisot, OCHE
Angela Janacaro, MT Mining Association
Hailey Boundrey, Self
Brent Anderson, Conifer Logging
Don Judge, MT AFL-CIO

Opening Statement by Sponsor:

SENATOR DEBBIE SHEA, SD 18, Butte, stated that many people working in natural resources have lost their livelihood due to the shut down of mines and the changing economy. SB 322 is designed to counteract the effects of mine closures. The bill offers those workers the opportunity to be educated for the changing economy. Once the resource indemnity trust fund (RIT) is capped at 100 million dollars, the bill takes \$300,000 from the RIT tax each year for five years. That money is put into an education program to retrain displaced resource workers. The bill provides specific requirements to be eligible for the program. Amendments SB032201.amv **EXHIBIT(nas39a01)** address concerns within the fiscal note **EXHIBIT(nas39a02)**. She stressed the importance, of Montana to retain workers who have been laid off.

Proponents' Testimony:

Bill Snoddy, Self, submitted written testimony from individuals in his community who were unable to attend the hearing **EXHIBIT(nas39a03)**. He told the committee that the state is beginning to abandon its old way of life, by doing this Montana is leaving behind its work force due to their lack of qualifications. He agreed with the need for re-education in order to keep hard working families in Montana.

Arlene Parisot, OCHE, declared that SB 322 is a commendable effort to support displaced workers. She argued that with the shift in the economy it has left many workers unable to compete in the work force. During the past two decades mining jobs have decreased and service jobs have increased. Without the opportunity to increase the education skill level of displaced workers, these individuals may be forced to leave the state to provide an adequate quality of life for their families. She closed by offering an amendment to the committee **EXHIBIT(nas39a04)**.

Angela Janacaro, MT Mining Association, urged the committee to support re-education for workers who have lost their jobs in the natural resources industry.

Hailey Boundrey, Self, told the committee that if the bill does not pass, it is telling the people of Montana that we are willing to accept the fruits of their labor, but we are not willing to help them.

Brent Anderson, Conifer Logging, told the committee that the bill relates to him and his employees. What spurred his interest was Pyramid Lumber going out of business that had a direct effect on his company. As a result his company had to terminate employees, cut health insurance, and up their wages to compensate for the loss. Employees asked if there were programs available to retrain them. He is concerned because many of his employees will have to go back to a minimum wage, unable to support their quality of life.

Don Judge, MT AFL-CIO, informed the committee that they can only serve less than 10% of the dislocated work force of Montana. Based on the priorities established by the State Work Force Investment Board, the money they receive must first go to the areas with the largest disposition. There is not enough money to fund all of the first and secondary companies. The people they do serve get re-educated, retraining makes people successful.

Closing by Sponsor:

SEN. SHEA charged that the natural resource worker has played an important role in shaping the state of Montana, and maintaining the freedom of the United States.

HEARING ON SB 375

Sponsor: SENATOR DUANE GRIMES, SD 20, Clancy

Proponents: Michael Kakuk, MT Contractors Association
Steve Welch, DEQ

{Tape : 1; Side : B; a portion of SEN. GRIMES opening statement was cut off.}

Opening Statement by Sponsor:

SENATOR DUANE GRIMES, SD 20, Clancy, informed the committee that the bill deals with Montana's open cut act. The act primarily deals with sand and gravel mines, which is crucial to the construction of Montana. The bill clarifies authority issues and makes it easier for the agency to implement.

Proponents' Testimony:

Michael Kakuk, MT Contractors Association, told the committee that the DEQ & the MCA sat down and negotiated the bill. The language in the bill makes it clear that open cut use is critical for the state's economy. The bill gives the DEQ the authority to amend operations. The bill establishes important guidelines and clarifies issues surrounding amending authority. He stated that the bill will not cause delays when implementing a plan, it becomes effective once the director has approved it. The bill also set up a clear permit application process, and does not allow the agency to go past three years when gathering information. The agency is only allowed to use that information to decrease the penalty, not increase. He informed the committee that when a statement of proposed penalty is issued, the penalty calculations have to be included.

Steve Welch, DEQ, informed the committee that the DEQ had the opportunity to work with the bill drafter. He stated that good modifications have been made to the existing law. He declared that the time frames are sufficient and allow for a comprehensive review. The bill allows the state to modify a permit and offer intervention if necessary.

Questions from Committee Members and Responses:

SEN. KEN TOOLE asked why it was necessary to put into statute that the DEQ cannot gather information past three years if they already practice that measure. **John Erigo, DEQ,** stated that two years is the statute that the DEQ follows. It is a limit they have imposed on themselves. **SEN. TOOLE** questioned how the two year rule was affected when they adopted their current statutes. **Mr. Erigo** said he did not have the answer to that.

SEN. TOOLE asked if he could explain an unbiased public policy rationale behind having one election established by the bill.

Mr. Kakuk said he could not. He stated that if the department has to increase the penalty, there are not clear statutes or limitations that the agency has to follow. Therefor the public is not aware of what can be used against them. The judge, not the agency has to determine matters of justice especially when information is used to increase a penalty. **SEN. TOOLE** wanted to know if it is unusual for an agency to have a quasi judicial process. **Mr. Kakuk** told the committee that it was not, but there are clearly defined statutes that the agency must follow. **SEN. TOOLE** struggled with the idea that decreasing helps the situation. **Mr. Kakuk** stated if it is used for the violators benefit, it would be hard to argue that it violates due process.

SEN. LORENTS GROSFIELD inquired about the limitations this bill creates in regards to dust and noise. **Mr. Welch** told him that

the section in question was removed in the amendment. The section was very broad, and set up an area of risk. **SEN. GROSFIELD** asked if the intent was to keep it within the substantial, numerical and narrative standards. **Mr. Welch** stated that the proposed amendment assures that they do not violate the purpose of the part. **SEN. GROSFIELD** clarified if the purpose of the part was in the policy section. **Mr. Welch** affirmed that it was.

SEN. MIKE TAYLOR inquired if the owner of a plot of land, less than 200 hundred acres is responsible for weed control. **Mr. Welch** told him that the operator of a site is responsible for the control of weeds. **SEN. TAYLOR** asked what the fine was for failure to control weeds. **Mr. Welch** informed him that it ranges from \$400-\$600.

SEN. TOOLE asked **SEN. GRIMES** if he would be opposed to an amendment under the statement of policy section of the bill. **SEN. GRIMES** felt an amendment would make the presumption that this bill was going to hurt the environment. **SEN. TOOLE** stated that he brought up the amendment because of the need for recommendations addressed in the bill. **SEN. GRIMES** said he would be willing to work with **SEN. TOOLE** on a less inflammatory compromise.

Closing by Sponsor:

SEN. GRIMES told the committee that the agency needs to be able to change plans if necessary.

HEARING ON SB 83

Sponsor: SENATOR BEA MCCARTHY, SD 29, Anaconda

Proponents: John Arrigo, DEQ

Opponents: Gale Abercrombie, MT Petroleum Association
Frank Crowley, ASARCO
Steve Wade, Burlington Northern

Opening Statement by Sponsor:

SENATOR BEA MCCARTHY, SD 29, Anaconda, thanked the committee for allowing her to delay the bill because of amendments **SB008302.ate EXHIBIT(nas39a05)**. She deferred the explanation of the amendments to **John Arrigo, DEQ**.

Proponents' Testimony:

John Arrigo, DEQ, explained to the committee that SB 83 is designed to modify the notice letter requirements for assessing an administrative penalty under the Montana Water Quality Act. It is also designed to change procedures for assessing penalties under Montana Mine Reclamation Laws. The DEQ felt that the changes proposed to the Mine Reclamation Laws needed further study, therefore amendments were drafted to strike those provisions from the bill (exhibit 5). He told the committee that the Water Quality Act requires the department to issue a notice letter prior to assessing an administrative penalty. The letter must include the amount of penalty issued if violations are not corrected. He stated that this presented problems because it is impossible to inform the alleged violator of the amount of the penalty in the letter because it is too soon in the process. Also, the department feels that some violations still warrant a penalty even if the violations are corrected. Amendments were drafted to correct these concerns **SB008301.ate EXHIBIT (nas39a06)**. The proposed amendments make the letters sent out by the department seem less aggressive.

Opponents' Testimony:

Gale Abercrombie, MT Petroleum Association, stated that this is an issue that needs to be worked on during the interim with the DEQ.

{Tape : 2; Side : A}

It was her hope that these issues could be worked out before legislation was drafted. She stated that there is a need to make sure that the penalties are worked out. She charged that some of the language stricken from the bill is necessary and should be reinstated. There are simply too many issues that need to be worked through still.

Frank Crowley, ASARCO, told the committee that it is important to have a strong structure in place so that these types of issues can be dealt with effectively. He stated that the Board of Environmental Review, at the request of the DEQ has adopted nine pages of regulation to assess and calculate administrative penalties. He informed the committee that many of the penalties can add up to thousands of dollars, and violators are responsible for cost recovery.

Steve Wade, Burlington Northern, stated that the process needs to be well laid out and consensus building. He told the committee

that the bill erodes due process. This is an important policy decision; the goal should be to ensure correction of errors.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **SEN. MCCARTHY** where the bill came from. **SEN. MCCARTHY** informed her that it was her understanding that the bill had gone through the consensus process. If the committee decides that the correct process has not been followed, that is fine, and they will make sure it happens during the next interim.

SEN. LORENTS GROSFIELD speculated that once the bill was amended it didn't do much. **Mr. Arrigo** charged that it changed the notice requirements.

CHAIRMEN CRISMORE wanted clarification regarding the Missoula Waste Water Plant sewage spill. **Mr. Arrigo** informed him that an investigation led to a large spill. The DEQ worked with the company and asked them to do some additional monitoring. At current, they are determining a penalty.

Closing by Sponsor:

SEN. MCCARTHY told the committee that if they chose not to adopt the amendments, **Mr. Arrigo** would work on them further during the interim. She urged the committee to keep the Water Quality Act.

Amendments **SB008303.ate EXHIBIT(nas39a07)** were handed out, but not referenced.

HEARING ON 463

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, Big Timber

Proponents: Amie Grmoljez, Representing Professor John Horwich
Page Dringham, MT Relators, MT Landowners
Frank Crowley, ASARCO
John Bloomquist, MT Stockgrowers Association
Don Allen, WETA
Mike Collins, Self
Gail Abercrombie, MT Petroleum Association
Angela Janacaro, MT Mining Association

Opponents: Carl England, Self
Bob Campbell, Self
Anne Hedges, MEIA
Don Judge, MT AFL-CIO

Matthew Clifford, Clark Fork Coalition
 Laura Ziemer, MT Council of Trout Unlimited
 Steve Gilbert, Self
 Brian Kahn, Self
 Rita Blouke, League of Women Voters
 Pam Hackley, Self
 Steve Kelly, Friends of the Wild Swan
 Stacey Anderson, MT Naral
 Al Smith, MTLA
 Stan Frasier, Self
 Jean Belangie-nye, Self
 Julia Page, NPRC
 Jacqueline Lenmark, MT Coalition for Privacy and
 Free Expression
 Scott Crichton, ACLU
 Jim Barngrover, Self
 Gayle Joslin, Self
 Jim Sweeney, Self

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, Big Timber, handed out a copy of a few sections from the Constitution of the State of Montana **EXHIBIT (nas39a08)**. He opened his remarks by reading aloud from the preamble of the Constitution. He questioned the quality of life. Quality of life is the ability to pay your bills, which leads to being able to fulfill your basic needs. Article 2 Section 3 defines inalienable rights. But does not put an order of importance on them. He conceded that there are times when those rights will come into conflict; the bottom-line is finding a balance between those rights. You cannot have them all 100%. That issue raises the question of who makes the balance. He charged that it is the duty of the legislature to create the balance. Already the legislature spends their time balancing rights, and that is the government process. **SEN. GROSFIELD** read aloud from Article 9 Sections 1,2,and 3. He stated that the Supreme Court case of MEIC v. DEQ is a good example of balancing inalienable rights and environmental quality. He told the committee that Sections 1,2 and 3 were approved at the Constitutional Convention on March 1, 1972, but Article 2 was not included in the Bill of Rights until six days later. On that day Delegate Burkhardt moved to put the phrase a "clean and healthful environment" into Article 2. Mr. Burkhardt stated that his intention was that the proposed phrase interrelate with the rights provided for, and make sure it was in concert with the preamble. The Constitution says that the legislature has the duty to balance those rights. He informed the committee that the self-executing provision in the Constitution are provisions that

the judiciary can enforce without any aid. Nonself-executing provisions lie dormant until they have been given legal effect by the legislature. The Montana Supreme Court has held numerous times that the provisions that are not self-executing, the court will not weigh into. He gave an example of a lottery case, the Supreme Court ruled that since the legislature did not act upon guidelines established in the Constitution, the person bringing the lawsuit could not sue. They stated that the legislative function shall not be usurped by the judicial branch. It is a separation of powers. He stated that in the MEIC decision the court referenced Article 9 of the Constitution in detail, but they left out Subsection 2. In the decision it spells out number one, has four dots where number two should be and then has number three. It ignored what the people passed in the Constitution. He stated that the court should not be subject to the political whims of the people. However, they should not leave something out just because it does not suit their needs. The bill is a reminder to the court and the people that the Constitution states that this arena is the arena of the legislature. He hypothesized that the rationale of the MEIC decision would have been different if this law was in place. It was a narrow decision.

{Tape : 2; Side : B}

He stated that the legislature is here to represent the will of the people, a balance determined by this body is determined valid unless determined otherwise. He reminded the body that the legislature is held accountable to the law, they cannot throw one out on a whim. The key is to find the balance between the inalienable rights. What the bill does is decide weather or not the legislature sends this decision to the people.

Proponents' Testimony:

Amie Grmoljez, Representing **Professor John Horwich**, read a letter in favor of the bill **EXHIBIT(nas39a09)**.

Page Dringham, MT Relators, MT Landowners, told the committee that the bill already does things that the legislature should be doing. She stated that the legislature already balances competing rights. The Bill of Rights are balanced one with another; the legislature is better suited than the courts to balance rights.

Frank Crowley, ASARCO, asserted that the Natural Resources Committee is the ideal group to deal with these issues. He informed the committee that he was involved in drafting one Friends of the Court brief in the MEIC case. He said that they brought it to the courts' attention that the legislation was

responsible for these types of decisions, but the court ignored their argument. This is necessary legislation to affirm the Constitutional Conventions' decision that this is the legislatures' responsibility.

John Bloomquist, MT Stockgrowers Association, exclaimed that it is very important that the legislature be allowed to balance inalienable rights. He stated that the MEIC was a narrow decision, but the concepts embodied in the decision could have far reaching ramifications. This could throw the concept of predictability at the whim of the court, which is not the place for it. He speculated that this would put Montana in a bad position, placement of this issue in Article 2 has created a double-edged sword.

{Tape : 3; Side : A}

Don Allen, WETA, told the committee that many issues surrounding economic development are uncertain. He stated that many of the people he represents are involved in environmental lawsuits. The legislature needs to be allowed to administer the balance.

Mike Collins, Self, spoke in favor of the bill and submitted written testimony **EXHIBIT (nas39a10)**.

Gail Abercrombie, MT Petroleum Association, stated that it is the duty of the legislature to balance rights and they support putting the new language into the Constitution.

Angela Janacaro, MT Mining Association, spoke in favor of the bill.

Opponents' Testimony:

Carl England, Self, told the committee that over the course of eighteen years of legal practice he has handled numerous Constitutional cases. He said the way the bill is written, it has the potential to eliminate individual rights of citizens. An important function of the Constitution is to limit the power of government so that they do not infringe on our rights. He stated that no right in the Constitution is absolute, a classic example is yelling fire in a crowded room. If the government infringes on our rights they must have a reason to do so, and act, in the least restrictive manner. There is a clear distinction between a fundamental and non-fundamental right. The bill amends Article 2, the rights "included" in the section are not exclusive. The rest of Article 2 encompasses our inalienable rights. The bill would add a section to the rest of Article 2 that says the legislature may balance these rights and the balance is valid

unless reasonable. However, those rights that need to be balanced are not clearly stated in the bill. The ambiguity causes the language to affect all Constitutional rights. The legislatures' intrusion of those rights are based on the balance of whether or not it was unreasonable. That is the rational basis test, the test that is applied to current rights that are not guaranteed in our Constitution. He charged that the bill establishes that the infringement upon any individual right is to be judged by a reasonable and rational basis standard, which means that the concept of fundamental Constitutional rights are in jeopardy. That is not the purpose of the Constitution or the purpose of the sponsor. By placing this section into Article 2 it does not elevate those rights to a high standard, in turn, it lowers their worth. In the MEIC case the court found that the right to a clean and healthful environment is a fundamental right, abridgement of that right is going to require a showing of a compelling state interest. He charged that if you eliminate that standard you eliminate the right to a clean and healthful environment from Article 2 Section 3.

Bob Campbell, Self, informed the committee that he was at the Constitutional convention, served on the Bill of Rights committee and voted to put clean and healthful environment into the Constitution. He said that the framers of the new Constitution did not want to take away any rights that had been previously granted by the old Constitution. He declared that the bill is not a policy statement, you cannot take away rights that you have already granted people. Rights are protected by the Constitution so that the next legislature cannot change them on a whim. The bill will take out the section on inalienable rights that has been in the Constitution since 1889. The MEIC case was sent back to the district court to have them decide a balance. If the legislature does not put protections into the Constitution it is necessary and proper for the court too. Clean and healthful is a goal and a promise to the young people. It is a gift. He asked if there is such a crisis before the legislature that inalienable rights must be reduced or eliminated.

Anne Hedges, MEIC, questioned the problem that the legislature is trying to fix. She stated that it is not right to reinterpret the Constitution based on a two year old case. It is not impossible to balance the right to mine with the right to a clean environment. This is the first time in thirty years that the Montana Supreme Court has interpreted this provision of the Constitution. She informed the committee that the legislature has presented 79 bills to weaken environmental standards, of those 38 bills have passed. One court case verses 38 successes at weakening environmental law, shows where the legislatures' political whims lie. She read aloud from the MEIC court case decision, and affirmed what the Supreme Court decided. The

decision established a three part test, MEPA helps the state pass that test. She asserted that she did not want to see the legislative body turn into a mini-Supreme Court.

Don Judge, MT AFL-CIO, read aloud the definition of inalienable from Webster's Dictionary. He told the committee according to the bill since rights cannot be separated, all rights would have to be taken away. He charged that the legislature determines the right to privacy. That is not a good situation. The legislature should not tamper with the rights of the people. He began discussion on SB 326,

{Tape : 3; Side : B}

A point of order was called by **CHAIRMAN CRISMORE**. **Mr. Judge** encouraged the committee to kill the bill.

Matthew Clifford, Clark Fork Coalition, referenced the letter by **Professor Horwich** (exhibit 9). He told the committee that the MEIC case did not deal with a scientific method of decision making. The MEIC case had an entire class that was not subject to review.

Laura Ziemer, MT Council of Trout Unlimited, stated that the bill undermines the Constitutional protection of fundamental rights. There must be a compelling state interest in order for the state to intrude on our rights.

Steve Gilbert, Self, began by reading a prepared testimony, a point of order was called by **SEN. MIKE TAYLOR** and **CHAIRMAN CRISMORE**. **Mr. Gilbert** handed in his written testimony **EXHIBIT (nas39a11)**.

Brian Kahn, Self, stated that he was concerned and surprised by the bill. He charged that legislatures could not uphold their oath to uphold the Constitution if they voted for this bill. The question is the standard by which the legislature must operate to legally restrict or limit a Constitutional right. Reasonableness is the standard upheld by the courts for routine decision making. Inalienable rights are not to be tampered within the absence of the most serious public interest.

Rita Blouke, League of Women Voters, spoke in opposition to the bill and submitted written testimony **EXHIBIT (nas39a12)**.

Pam Hackley, Self, told the committee she was concerned by this provision. She argued that the bill is not a necessary change to the Constitution. This would be a complicated issue for the

citizens to vote on, there needs to be caution when considering change to the Constitution.

Steve Kelly, Friends of the Wild Swan, declared that the bill threatens our rights. Rights must be balanced with responsibility; the bill takes that away. He accused the legislature of skirting responsibility by not cleaning up the environment. The bill sets up an uncomfortable situation between the legislature and the judicial system.

Stacey Anderson, MT Naral, stated that our rights are being threatened. The MT Constitution is the strongest in the nation, it is the defining document of the Montana citizen.

Al Smith, MTLA, charged that the bill is taking away fundamental rights.

Stan Frasier, Self, accused the legislature of not looking out for his personal interests. He disagreed with the idea of giving the legislature more power over his personal rights.

Jean Belangie-nye, Self, spoke in opposition to the bill and submitted written testimony **EXHIBIT (nas39a13)**.

Julia Page, NPRC, stated that a vote for this bill is a vote against Montana's right to a clean and healthful environment. The bill would destroy inalienable rights, rights would be surrendered to the legislature to balance.

Jacqueline Lenmark, MT Coalition for Privacy and Free Expression, stated that the title belies the true effect of the bill. She declared that the Judiciary Committee should have handled this bill.

Scott Crichton, ACLU, told the committee that the bill is a separation of powers issue. If the legislature does not like a decision that comes from the court, that does not give them the right to dismantle the system of checks and balances.

Jim Barngrover, Self, told the committee that he moved to Montana because of how he wanted to live his life. He is concerned about what the passage of the bill would do to people who have a vision for how they want to live their lives.

Gayle Joslin, Self, spoke in opposition to the bill.

Jim Sweaney, Self, stated that the bill puts the legislature against the people.

{Tape : 4; Side : A; Comments : Mr. Sweaney's testimony was cut off.}

Questions from Committee Members and Responses:

SEN. TOOLE asked how **SEN. GROSFIELD** saw balancing rights as a factual dispute. **SEN. GROSFIELD** pointed out that often the legislature has bills that require the balance of power. He stated that it is often balanced beyond the general circumstances. **SEN TOOLE** questioned if the legislature was required to balance inalienable rights. **SEN. GROSFIELD** stated that the legislature already does.

SEN. BILL TASH asked if the clean air language was once taken out and then put back in. **Mr. Campbell** argued that clean and healthful was the great debate of the Constitutional Convention. It was agreed upon that there needed to be specific language about protecting the environment. He stated that the strongest protection for the environment would be to use the language clean and healthful.

SEN. TAYLOR asked **Mr. Barngrover** which state he moved from. He told him he had moved to Montana from Wyoming.

SEN. TAYLOR asked if the people are smart enough to decide this issue. **Ms. Hedges** declared that the people in 1972 had a good document brought before them. If the legislature is going to change the Constitution it must be for a compelling reason.

SEN. TAYLOR expressed his concern that the legislature would not be able to address all of these issues within the 90 day time frame. He also inquired if the bill takes away any rights. **SEN. GROSFIELD** told him the intent of Article 2 Section 3, is not to take away rights. The language does not take away other rights, it includes them. He stated that he would be open to an amendment to make the language clear.

CHAIRMAN CRISMORE asked **Ms. Hedges** if she could provide specific examples of how the 38 bills passed to weaken the environment have had a negative impact on air or water. She told him that the Department of State did not have to go through the EIA process. As a result, ten tons of pollution were put into the air without a permit. He stated that there are numerous individuals that do not see the terrible impacts on the environment.

Closing by Sponsor:

SEN. GROSFIELD questioned the argument that when legislatures take an oath to uphold the Constitution they can never consider an amendment. Numerous amendments have already been passed by the legislature. One way to look at the 38 bills is that they weaken the environment, another way is to see that they have provided a balance under the current framework. Change does not equal degradation of the environment. He stated that Montana was one of the first states to put strong environmental standards into their Constitution. Since that time other states have either modeled Montana's Constitution or created their own language. He charged that the MEIC decision is the decision that brought forth the issue of separation of powers. The court ignored the Constitutional provision that it is the legislature's problem to deal with "clean and healthful". He conceded that the decision was the correct decision and that it would not have been changed if the courts would have taken into account the section of the Constitution in question. He expressed his appreciation for the work done at the Constitutional Convention. The bill does not eliminate inalienable rights, it is not a repealer. The bill's purpose is to balance rights. If the balance is not upheld the courts will reprimand the legislature. He told the committee that if there is a problem in Article 2; he is willing to fix it. He disagreed with the idea that the bill subverts the strict scrutiny test in regards to inalienable rights, Article 9 takes care of this. He charged that Article 9 Section 1 Subsection 2 was ignored by the courts. He informed the committee that he served on the EQC for six years and during that time numerous environmentalists quit showing up at the EQC. When he inquired about their whereabouts, they said they quit coming because they got their work done in the courts. He argued that that is not the way it should be, the legislature has the responsibility of taking care of the rights and interests of the people. He read aloud from the testimony by **Professor Horwich**, it is appropriate that the legislature affirms that the decisions of the legislature are valid unless proven otherwise by the courts. The bill is about letting the people decide if they still agree that the legislature should be balancing those rights in a rational fashion with consideration of all rights.

The following testimony was handed in at the end of the hearing:

Gloria Flora, Executive Director, Sustainable Obtainable Solutions, EXHIBIT(nas39a14).

ADJOURNMENT

Adjournment: 6:15 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas39aad)